



EMPLOYMENT TRIBUNALS

Claimant: M Cowan

Respondent: Bellway Homes Ltd

JUDGMENT

The claimant's claims are struck out.

Reasons

1. At a hearing on 21 October 2025, which the claimant failed to attend, Employment Judge Gowland made an Order in the following terms.

'The Claimant is to write to the Respondent and the Tribunal to confirm that they are actively pursuing their claim by 11th November 2025, failing which their claim shall be struck out.'

2. Although paragraph 1 of that Order suggested this was an 'unless order', it appears not to be an Order made under Rule 39 because:
 - 2.1. It referred to strike out rather than dismissal of the claims.
 - 2.2. It did not say the claim must be dismissed 'without further Order' if not complied with.
3. It therefore appears to me that rather than an Order made under rule 39, EJ Gowland was giving the claimant an opportunity to say that he is actively pursuing his claim so as to avoid it being struck out under Rule 38(1) (d) on the ground that it has not been actively pursued.
4. Mr Cowan did not respond by the deadline. According to the terms of the Order, that would mean the tribunal is bound to strike out the claim and has no discretion to do otherwise. However, I note that, regrettably, the Order was not sent to the parties until 11 November 2025. Therefore, to comply with the deadline for responding the claimant would have had to respond within less than 24 hours.
5. The late service of the Order is a material change in circumstances that warrants me revisiting the part of the Order that requires the claim to be struck out. I do not consider myself bound by that part of the Order. Rather, I consider I retain a discretion as to whether to strike out the claim or not.
6. Had Mr Cowan asked for extra time to respond (with or on the day or within a reasonable time afterwards) a Judge would no doubt have agreed. Similarly, had Mr Cowan written in within a

reasonable period of the 11 November deadline to say he is pursuing his claim, that would have been taken into account.

7. However, Mr Cowan did neither of those things. He has not been in touch with the tribunal at all.
8. Mr Cowan has had a reasonable opportunity to make representations saying why his claim should not be struck out. He has not made any such representations.
9. The final hearing is listed to take place on 5-7 May 2026. Mr Cowan has not complied with EJ Gowland's directions to provide information to clarify elements of his claim. Nor has he disclosed to the respondent documents relevant to the issues, cooperated with the respondent to agree a file of documents for the final hearing or served witness statements as required by EJ Gowland's Orders. I am satisfied that Mr Cowan is not actively pursuing his claim. I am satisfied that Mr Cowan's failure to actively pursue his claims means there can no longer be a fair hearing.

Employment Judge Aspden

Date: 13 March 2026